IN THE HIGH COURT OF JUDICATURE AT BOBBY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.362 OF 2007

Navratan Capital &
Securities Ltd. .. Petitioner.

Versus

Kailash Asaram Bhakre .. Respondent.

Mr.Zal Andhyarujina i/b.Mr.Vipul Shukla for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th October, 2007.

P.C.

1. Admit. Heard forthwith. None present for respondent though served. Heard Mr.Andhyarujina i/b.Vipul Shukla for petitioner.

2. This petition challenges the award passed by the Sole Arbitrator on 14th May, 2007.

3. The arbitration petition was duly served on the respondent inasmuch as the affidavit of service indicates that the packet containing the petition and the annexures thereto was sent by R.P.A.D. and the respondent refused to accept the service. Due intimation was sent by the postal authorities but the service was refused by the respondent.

4. In such circumstances and when the respondent never appeared before the Sole Arbitrator, it must be presumed that the respondent is duly served. In any event, refusal is good service.

5. With the able assistance of the counsel, I have perused the subject Award. The Award is

ex-parte and the respondent was not appearing. He has not filed any defence nor disputed the liability in any manner, yet, the Sole Arbitrator rejects the claim of the petitioner on the ground that it is confusing. The Sole Arbitrator has not observed that whatever is due and payable by the respondent is indeed not due and payable. All that he observes is that the claim includes some amount, which is due and payable on account of trading at the Bombay Stock Exchange, whereas, the present claim arose out of the trading at National Stock Exchange, Mumbai.

6. Perusal of the Award would show that this is hardly any ground to reject the claim. The claim statement has also been perused by me. It has all annexures, statements and extracts from the books of accounts. The Arbitrator was obliged to consider that part of the claim, which arose from trading at the National Stock Exchange. He could have bifurcated the claim

himself and if part of it does not arise from trading at the National Stock Exchange but at Bombay Stock Exchange, he could have recorded appropriate conclusion in that behalf. Instead, rejecting claim in its entirety was not at all fair, just and proper.

7. The Arbitral Tribunal has, thus, failed to take into consideration the terms of submission to arbitration. The Arbitral Tribunal was obliged to consider these terms and the Agreement between the parties. This is a clear case where there is jurisdictional error on the part of the Arbitral Tribunal, which could safely be termed to be falling within the ambit of Section 34(2)(iv) read with Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996.

8. There is substance in the contention of the counsel that the Award has resulted in serious prejudice.

9. In the light of the same, the petition is allowed. The Award dated 14th May, 2007, copy of which is at Exhibit-A is quashed and set aside and the reference is restored to the National Stock Exchange of India Limited (Arbitral Tribunal) for adjudication afresh on merits and in accordance with law, uninfluenced by any observations in the order of the Sole Arbitrator.

10. Arbitration petition is disposed of in the above terms. No costs.

(S.C.Dharmadhikari, J.)